REMARKS

This is in response to the *Final* Office Action of December 22, 2009, where the Examiner has rejected claims 1-47. By the present amendment, applicant has cancelled claims 1-47, and added new claims 48-73. After the present amendment, claims 48-73 will be pending in the present application. In view of the following remarks, applicant respectfully requests an early notice of allowance for claims 48-73.

A. Rejection of claims 1-47 under 35 USC § 112, ¶ 1

The Examiner has rejected claims 1-47, under 35 USC § 112, ¶ 1, as failing to comply with the written description requirement. By the present amendment, applicant has cancelled claims 1-47. Accordingly, applicant respectfully submits that the rejection of claims 1-47, under 35 USC § 112, ¶ 1, has been rendered moot.

B. Rejection of Claims 1-47 under 35 USC § 102(e)

The Examiner has rejected claims 1-47, under 35 USC § 102(e), as being anticipated by Rhoads, et al. (U.S. Pat. No. 6,442,285) ("Rhoads"). By the present amendment, applicant has cancelled claims 1-47. Accordingly, applicant respectfully submits that the rejection of claims 1-47, under 35 USC § 102(e), has been rendered moot.

C. New Claims 48-73

By the present amendment, applicant has added new independent claims 48, 57 and 65, and their respective dependent claims 49-56, 58-64 and 66-73.

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It is respectfully submitted that independent claim 48, in part, recites "sending a request to a remote server for a delivery of the first media asset to the user device over the network, wherein the request is based on a selection of the first media asset from the asset list based on the information about the plurality of media assets stored in the memory; receiving the delivery of the first media asset at the user device, **periodically, based on one or more download timing constraints, managed by the user device, being met**; and **providing an uninterrupted and continuous stream of the first media asset for viewing by a user without requiring a real-time buffering**." Applicant respectfully submits that new independent claim 48 is supported by at least the following portions of the patent application:

> [0035] A client asset manager process resides in the user device and is responsible for downloading assets from the content provider. The asset manager uses the asset list to request media assets which are located at a remote site. The client process manages delivery of assets to the user device, periodically, when specific constraints are met. For example, assets are delivered to the user when there is optimal network bandwidth availability, user device memory, assured quality of service, etc.
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> [0050] A continuous, uninterrupted, and substantially seamless display (visual and auditory) of media content, by efficient delivery of the media assets is provided to users. Specifically, assets are delivered to a user device, periodically, when specific constraints are met (e.g., network bandwidth availability, user device memory, assured QOS, etc.) By integrating these assets with a viewing means (e.g., a web-browser), the user is provided an uninterrupted and continuous stream of media content that does not require real-time buffering.
>
> [0057] The client manages the download of assets based on predetermined constraints. As has been mentioned thus far, predetermined constraints include, for example, network bandwidth availability, user device memory, time of day, and assured quality of service. For instance, in one implementation of the client, downloads only occur when the user device is idle. In another implementation, the client process downloads only when network activity is below a certain level. In another instance, the client process measures the CPU and memory usage on the user device, and the predetermined constraint is met when usage is below certain performance

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> levels. In yet another instance the client process manages the downloading of assets based on the time of day, and statistically when network usage is lowest. The client process can of course, additionally utilize any combination of constraints to manage the download of assets.
>
> [0058] The download capability can be switched on and off by the user. The user can also specify that downloads only happen when the device is on certain networks (for example on a LAN versus a dialup connection). For example, a user may subscribe to a content service whereby assets are downloaded (by the client) in the late evening hours for morning viewing.
>
> [0059] Furthermore, intelligent and adaptive management of assets is possible without the need for an explicit "download manager" under control by a user. By intelligently, it is meant that the assets are delivered to the client when some predetermined constraints are satisfied (e.g., bandwidth of the network, time of day, QOS, etc.). By adaptively, it is meant that the asset lists, at the content provider site or the user device site, are automatically updated based on user viewing preferences.

Applicant respectfully submits that new independent claim 48 is patentably distinguishable over Rhoads. For example, Rhoads fails to disclose, teach or suggest "receiving the delivery of the first media asset at the user device, **periodically, based on one or more download timing constraints, managed by the user device, being met**," as recited in claim 48. It is respectfully submitted that there is no disclosure in Rhoads to remotely suggest that after a certain constraint (i.e. waiting in a queue for downloading) has been satisfied, there are any other constraints to be satisfied such that the downloading is performed "periodically, based on one or more download timing constraints, managed by the user device, being met." Applicant respectfully submits that Rhoads, in a pertinent section cited by the Examiner, simply provides:

> One hybrid between the new and old is a novel radio (e.g., for use in a car) that has a "capture" button on the front panel (or other form of user interface, e.g., a Capture icon on a GUI). If a user hears a song they want to record and keep, they press the Capture button while the song is playing. In response, the radio device decodes a watermark embedded in

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> the music, and thereby knows the identity of the music. The radio then makes a wireless transmission identifying the user and the desired song. A local repeater network picks up the wireless signal and relays it (e.g. by wireless rebroadcast, by modem, or other communication medium) to a music clearinghouse. The clearinghouse charges the user a nominal fee (e.g. via a pre-arranged credit card), and **queues the music for download** to a predetermined location associated with the user. (Col. 8, lines 16-30) (emphasis added.)

Therefore, it is respectfully submitted that there is no disclosure in Rhoads to suggest that there are constraints managed by the user device, and that the delivery of the media asset is performed periodically based on such constraints being met. Further, dependent claims 50-56 provide examples of certain download timing constraints that are managed by the user device.

Accordingly, independent claim 48, and its dependent claims 49-56, should be allowed. Further, applicant respectfully submits that independent claims 57 and 65 include limitations similar to those of claim 48 discussed above and, thus, independent claims 57 and 65 and their respective dependent claims 58-64 and 66-73, should also be allowed for the reasons stated above.

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D. Conclusion

Based on the foregoing reasons, an early Notice of Allowance directed to all claims 48-73 pending in the present application is respectfully requested.

Respectfully Submitted;
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